

## Jury Instructions

The plaintiff {Ortiz} claims that the defendant {Cook} was negligent, and that that the defendant's negligence caused an injury to the plaintiff.

As an affirmative defense, the defendant {Cook} asserts that the plaintiff's injuries were caused in whole or in part by the plaintiff's own negligence.

Negligence means a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect oneself or others from injury. The mere occurrence of an accident does not raise any presumption of negligence on the part of either the plaintiff or the defendant.

The plaintiff has the burden of proving the plaintiff's claim by a preponderance of the evidence. The defendant has the burden of proving the affirmative defense by a preponderance of the evidence. To prove something by a "preponderance of the evidence" means to prove that it is more probably true than not. If a party fails to meet his or her burden of proof as to any claim or defense, or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must reject that claim or defense.

The only issue to be decided by the jury are whether the defendant is liable for any injuries suffered by the plaintiff, and whether the plaintiff is liable for any of the plaintiff's own injuries.

Evidence may be either direct or circumstantial. Circumstantial evidence is the proof of facts or circumstances from which the existence or nonexistence of other facts may reasonably be inferred. All other evidence is direct evidence. The law makes no distinction between the effect of direct evidence and circumstantial evidence.

You are the sole judge of the credibility of the witnesses and the weight to be given their testimony. The weight of evidence is not necessarily determined by the number of witnesses testifying to a particular fact.

For the plaintiff, Elliott Cook, to recover from the defendant, Cody Ortiz, on the plaintiff's claim of negligence, you must find that all of the following have been proved by a preponderance of the evidence:

1. The plaintiff had injuries;
2. The defendant was negligent; and
3. The defendant's negligence was a cause of the plaintiff's injuries.

If you find that any one or more of the above three statements has not been proved, then your verdict must be for the defendant and you may disregard the remainder of this instruction. On the other hand, if you find that all of the above three statements have been proved, then you must determine whether the defendant has proven the affirmative defense of comparative negligence.

The affirmative defense of the comparative negligence of the plaintiff, Elliott Cook, is proved if you find all of the following:

1. The plaintiff was negligent; and
2. The negligence of the plaintiff was a cause of the plaintiff's own claimed injuries.

If you find the plaintiff, Elliott Cook, was injured, and that the plaintiff's injuries were caused by both the negligence of the plaintiff, Elliott Cook, and the defendant, Cody Ortiz, then you must determine to what extent the negligent conduct of each contributed to the injuries of the plaintiff, expressed as a percentage of 100 percent. The defendant has to show that the plaintiff's negligence *contributed* to the accident. If the plaintiff's behavior made his or her injuries worse, but didn't actually cause the accident, the defendant has failed to prove the affirmative defense.

A driver must maintain a proper lookout to see what that driver could and should have seen in the exercise of reasonable care. To look in such a manner as to fail to see what must have been plainly visible is to look without a reasonable degree of care, and is of no more effect than not to have looked at all.

At the time of the occurrence in question in this case, the following statutes were in effect:

- Vehicular traffic facing a circular green signal may proceed straight through the intersection.
- Vehicular traffic facing a steady circular red signal shall stop before entering the intersection, and shall remain standing until an indication to proceed is shown.
- A person under eighteen years of age shall not use a wireless telephone while operating a motor vehicle. A person eighteen years of age or older shall not use a wireless telephone for the purpose of engaging in text messaging or other forms of manual data entry while operating a motor vehicle. "Use" means talking on or listening to a wireless telephone or engaging the wireless telephone for text messaging or other forms of manual data entry.
- Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" are in place, such signal shall control the actions of bicyclists using the pedestrian crosswalks as follows:
- While the "Walk" indication is illuminated, a bicyclist facing such signal may proceed across the roadway in the direction of the signal indication.
- Whenever the "Don't Walk" indication is flashing, no bicyclist shall start to cross the roadway in the direction of the indication, but any bicyclist who has partially completed his crossing during the "Walk" indication shall proceed to a sidewalk or to a safety island, and all drivers of vehicles shall yield to any such bicyclist.
- While the "Don't Walk" indication is steadily illuminated, no bicyclist shall enter the roadway to cross that roadway in a pedestrian crosswalk in the direction of the signal indication.

A violation of any of the above statutes constitutes negligence.

If you find such a violation, you may only consider it if you also find that it was a cause of the plaintiff's claimed injuries.

It is not a defense to a claimed act of negligence that a person was unaware that his or her conduct constituted a violation of one of the above statutes.

A person has the right to believe that others will obey applicable laws and regulations, unless there are reasonable grounds to believe otherwise.

Although a driver may have the right of way, the driver must exercise reasonable care considering the existing conditions. Although a bicycle operator may have the right of way, the bicycle operator must exercise reasonable care considering the existing conditions.

The word "cause" as used in these instructions means an act or failure to act that in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have happened.

If more than one act or failure to act contributed to the claimed injury, then each act or failure to act may have been a cause of the injury. A cause does not have to be the only cause or the last or nearest cause. It is enough if the act or failure to act joins in a natural and probable way with some other act or failure to act to cause some or all of the claimed injury.

You must not be influenced by sympathy, bias, or prejudice for or against any party in this case.

## **Plaintiff {Ortiz} v. Cook {Defendant}**

### **Case Summary**

On June 26, 2013, Cody Ortiz, a working father employed at a technology company, drove into an intersection in Golden, Colorado. At the same time, Elliot Cook, a working father employed at a consulting firm, crossed through the intersection on a bicycle. The two collided and Elliot Cook was injured. Both parties claim the other one had a red light.

A witness in a nearby café claims the collision occurred at the start of the song played by the nearby bell tower. The plaintiff asserts that while riding his bike into the intersection, he was talking on his smartphone using a headset. A motorist on scene claims that they saw Cody Ortiz was texting while driving. A police forensic examiner asserts that the defendant motorist was speeding, evidenced by the distance traveled after slamming on the brakes to avoid the collision. Phone records for Cody Ortiz show that he received a text message at 11:58 am and placed a phone call at 12:08 pm.

The plaintiff (Ortiz) is suing the defendant (Cook) for negligence. The defendant is claiming an affirmative defense asserting that the plaintiff's injuries were caused in whole or in part by the plaintiff's own negligence.